Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

DAVID C. TARDIFF,

Petitioner

v.

STATE OF CALIFORNIA,
DEPARTMENT OF HEALTH SERVICES,

Respondent

On Petition For Writ of Certiorari
To the United States Court Of Appeals, Ninth Circuit
Judge Marsha Berzon, Judge Stephen Reinhardt, Judge
Susan P. Graber

PETITION FOR WRIT OF CERTIORARI

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63 pp

QUESTIONS PRESENTED FOR REVIEW

The underlying case involves the State of California attempting to enforce a Medi-Cal lien against a third party who had no notice of the existence of the Medi-Cal lien.

The United State Court of Appeals for the Ninth Circuit erred in holding that the due process issue was previously raised and decided by the California Courts and consequently erred in dismissing the claim brought in the U.S. District Court on the grounds of res judicata and the Booker Feldman Doctrine.

The issue presented here is whether or not the due process question was actually litigated in the state courts according to the rules set out by the Ninth Circuit's own cases and furthermore what the term actually litigated means.

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LIST OF OPINIONS AND ORDERS

The relevant opinions and orders are included in the appendix and are:

Appendix Designation	Description	Date
A.	Judgment by the court under Civil Procedure Section 437(c)	1/29/99
B.	Memorandum of Judgment Appellate Division of the Superior Court	3/15/00
C.	United States District Court Complaint for Violation of Civil Rights	6/27/00
D.	Supreme Court of California Denial of Review	7/19/00
E.	Order Granting Defendants Motion to Dismiss with Prejudice	2/7/01
F.	Notice of Appeal to United States Court of Appeals, Ninth Circuit	2/22/01

G.	Order and Memorandum of the United States Court of Appeals for the Ninth Circuit	1/9/02
H.	Order Denying Rehearing	12/26/01

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS HONORABLE COURT

The date the judgment sought to be reviewed was entered is January 9, 2002 (Appendix G).

Rehearing was sought, but denied December 26, 2001 (Appendix H).

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment in question is 28 U.S.C. § 1254(1).

THE PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

The Due Process Clause of the 5th Amendment to the Constitution of the United States: "No person shall ...be deprived of life, liberty, or property, without due process of law..."

The pertinent provisions of the Due Process Clause of the 14th Amendment to the Constitution of the United States: "...nor shall any State deprive any person of...or property without due process of law."

STATEMENT OF THE CASE

The basis for federal jurisdiction in the court of first instance was 28 U.S.C. § 1331, et seq.

The original case was a Medi-Cal lien claim filed by the State of California against a client and Petitioner as attorney for client. Summary judgment was rendered against Petitioner on undisputed facts, one of which was the fact that Petitioner was given no prior notice of the existence of the lien before settlement and disbursement of the client's case. The judgment of the Municipal Court mentioned not a single word concerning lack of notice of the Medi-Cal lien. (Appendix A)

Petitioner appealed to the Appellate Division of the Los Angeles Superior Court raising the issue of the due process implications of enforcing a third party lien against a third party who had no notice of the existence of the lien. The Appellate Division affirmed the lower court decision holding only that the collection statute in question did not provide for notice to the third party. (Appendix B)

The California Court of Appeal and the California Supreme Court denied review. (Appendix D)

Petitioner filed suit against Respondent in the United States District Court alleging a violation of 42 U.S.C. § 1983 and 28 U.S.C. § 1331 claiming that enforcing a third party lien against a third party who had no notice of the existence of that lien was a denial of due process of law. (Appendix C) The United States District Court dismissed the suit on the grounds that the issue had been litigated in the state courts and Petitioner was barred from litigating the issue based on res judicata and the Booker/Feldman doctrine. (Appendix E) The U.S. Court of Appeals, Ninth Circuit, affirmed. (Appendix G)

A Petition for rehearing was denied. (Appendix H)

Petitioner claims that the due process implications of enforcing a third party lien against Petitioner who had no prior notice of the existence of that lien is a denial of due process of law.

The issue of due process was never actually litigated in the state courts as that term is defined by Ninth Circuit Court of Appeals decisions and by decisions of this court.

ARGUMENT

I.

ISSUE PRECLUSION REQUIRES THAT AN ISSUE BE ACTUALLY LITIGATED AND DECIDED

Turning to the consideration of "issue preclusion" the U.S. Supreme Court pointed out in Migra vs. Warren City School District Board of Education 465 U.S. 75; 104 S.Ct. 892; 79 L.Ed.2d 56 (January 23, 1984) that,

> "issue preclusion refers to the effect of a judgment in foreclosing re-litigation of a matter that has been litigated and decided. This effect also is referred to as direct or collateral estoppel. The party asserting collateral estoppel has the burden to show from the record of the prior action that the asserted issue was previously litigated and determined."

Vella vs. Hudgins (1977) 20 Cal.3d 251, 257-258; 142 Cal.Rptr. 414, Pauline Landeros vs. Dana

Pankey 39 Cal.App.4th 1167; 46 Cal.Rptr.2d 165 (October 30, 1995); Hydranautics v. Filmtec Corp., 204 F.3d 880, 885 (9th Cir. 2000); Shapley v. Nevada Bd. Of State Prison Comm'rs, 766 F.2d 404, 407-408 (9th Cir. 1985). The municipal court judgment in the underlying action in this case contains not a single word concerning either lack of notice or due process. In the Order of the U.S. District Court granting defendants Motion to Dismiss with prejudice (Appendix E, page 30) the court states that, "Plaintiff concedes that the trial court considered his lack of notice argument." Plaintiff did no such thing as he only conceded that the lack of notice was raised as a defense but nothing in the municipal court opinion suggests that the "lack of notice" was considered by the trial court. The issue of the constitutional violation of due process was not considered by the Beverly Hills Municipal Court because it was never presented to them as Petitioner felt that that it was an inappropriate forum to present such an issue.

To quote from the Restatement of the law, Second Judgments, at §27 (e)

> "Issues not actually litigated a Judgment is not conclusive in a subsequent action as to issues which might have been but were not litigated and determined in the prior action. There are many reasons why a party may choose not to raise an issue, or to contest an assertion, in a particular action. The action may involve so small an amount that

> litigation of the issue may cost more than the value of the lawsuit. Or the forum may be an inconvenient one in which to produce the necessary evidence or in which to litigate at all..."

The decision of the Appellate Division of the Superior Court mentions the term due process but simply states that the Department of Health Services is not required to give notice of a lien because the statute in question does not require notice. (Appendix B, page 11 and 12) That opinion does not decide the due process issue, it merely restates the problem in a slightly different form.

In the case of Carl L. Jones vs. City of Alton, Illinois et al. 757 F.2d 878; 1985 U.S. App. LEXIS 29734 (March 12, 1985), the court discusses issue and claim preclusion as follows,

> "In order to be barred by issue preclusion, or by claim preclusion where the issue was litigated, the prior decision must have been on the merits of the issue. 'While the purpose of the doctrine is to prevent a party from litigating the same issue twice, it should not be used to preclude a party from litigating the matter at all.' The party must have had a full and fair opportunity to litigate the issue, and it must not be an injustice to apply the doctrine. In this sense the doctrine is an equitable

> doctrine, and subject to equitable principles. It 'should only be applied as fairness and justice require'.

There is no due process issue that was presented and decided by any California court. Consequently there is neither an issue preclusion nor a claim preclusion and res judicata does not apply to the facts of this case.

II.

FOR THE DOCTRINE
OF COLLATERAL ESTOPPEL
TO BE APPLIED IN A FEDERAL PROCEEDING
THE EXACT ISSUE MUST HAVE BEEN
ACTUALLY LITIGATED IN THE STATE COURTS.

The case of Harmon vs. Kobrin, 250 F.3d 1240; 2001 Cal.Daily.Op.Service 663; 200 Daily Journal DAR 4525 (May 9, 2001), speaks to the problem as follows, "First, the issue sought to be precluded from re-litigation must be identical to that decided in the former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding..." (250 F.3d 1240, 1245) It goes on to state on the same page, "the party asserting collateral estoppel bears the burden of establishing these requirements."

There were two decisions by the California courts, one was the judgment of the Municipal

Court which is Appendix A and that decision contains not a single word concerning the lack of notice of a third party lien or the due process implications of such a lack of notice. The Harmon court states the following, "thus, a court's silence concerning a pleaded allegation does not constitute adjudication of the issue" (250 F.3d 1240, 1245). Appendix B is the Memorandum of Judgment of the Appellate Division of the Superior Court and page 11, contain the only mention of lack of notice and due process in all of the litigation in California state courts and it states the following,

> "next, Appellants' claim that the Medi-Cal recovery statutes fail to comport with due process. In their brief, Appellants argue that the director failed to give them notice of the Medi-Cal liens, and that appellant Tardiff had no right to withhold money not authorized by statute without notice of lien claimant. Appellants' arguments on this issue are not persuasive. Section 14124.73, 14124.76 and 14124.79, mandate that notice be given by the Medi-Cal beneficiary and the Medi-Cal beneficiaries' attorney, if one is retained. The statutes impose no duty upon the director to give notice to the Medi-Cal beneficiary or his or her attorney."

Under the teaching of the Harmon case it must be decided whether those quoted words show that the issue of due process was actually litigated in the state court proceeding. To this writer the term "actually litigated" means that some court decided the facts, applied those facts to existing law and made a decision. The language of the Appellate Department of the Superior Court does not analyze the due process implications involved in the lack of notice of a third party lien. That decision only indicates that notice to the third party is not required because the statue doesn't require notice to the third party. Petitioner is aware of the fact that the statute in question does not require notice of a third party lien, but the argument here and in the lower courts is and was that both the United States and the California Constitutions and decisions rendered there-under do require notice of the existence of a third party lien in order for it to be enforceable against a third party. The municipal court was silent on the notice and due process issue and the Appellate Division of the Superior Court simply restated the problem rather than attempting to solve it. Petitioner has not had a fair opportunity to litigate the issue of due process in the California courts.

III.

THE ROOKER-FELDMAN DOCTRINE ALSO REQUIRES A FULL AND FAIR OPPORTUNITY TO LITIGATE.

The case of Worldwide Church of God vs. Leona McNair, 805 F.2d 888 (April 9, 1986 Ninth Circuit) discusses the Rooker-Feldman Doctrine and compared it to "res judicata" as follows,

> "Faced with the task of deciding the power to review constitutional issues which arise from the state court proceeding, we review the res judicata requirement of full and fair opportunity to litigate, and the Rooker-Feldman Doctrine 'inextricably intertwined' barrier as two sides of the same coin. Under the rubric of either 'jurisdiction' or 'res judicata' the crux of the question is whether there has already been actual consideration of a decision on the issue presented. If consideration and decision have been accomplished, action in federal court is an impermissible appeal from the state court decision, if no consideration has been given, or any decision on the matters ambiguous, it is unlikely that the issues presented in state high court and to the federal court are so inextricably intertwined that the federal court cannot take jurisdiction again'. (805 F.2d 888, 892)

IV.

A FUNDAMENTAL REQUIREMENT OF DUE PROCESS IN ANY PROCEEDING WHICH IS TO BE ACCORDED FINALITY IS NOTICE.

The above point was made clear in Mullane vs. Central Honover T.R. Co., 339 U.S. 306 (1950) and in the recent Supreme Court case of Dusenbery vs. United States (January 8, 2002, #006567) the adequacy of notice was the issue. Both opinions make it clear that a fundamental requirement of due process is notice.

The traditional method of ascertaining the existence of a third party in a Medi-Cal lien case is for the healthcare provider who is paid by Medi-Cal to inform the Medi-Cal administration when a lawyer is requesting medical information concerning a Medi-Cal patient. In the case at hand Petitioner received no medical information or response from the healthcare provider. The first indication that Petitioner received concerning a possible Medi-Cal claim was some ninety (90) days after the case was settled and fully disbursed to the client. These are all undisputed facts in the underlying claim.

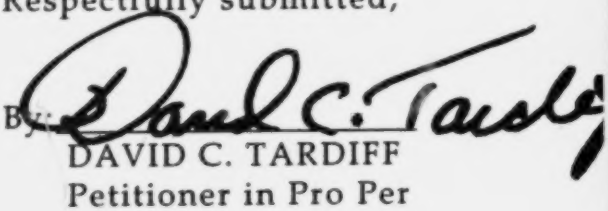
———————♦———————

CONCLUSION

Petitioner argues here that he has not had a full and fair opportunity to litigate the lack of notice of a third party lien and its due process implications in the California courts and seeks only to litigate the issue for the first time in federal court. Petitioner requests this court reverse the decision of the United States Court of Appeals, Ninth Circuit and remand the matter for a full hearing on this very serious issue which effects every lawyer who must deal with third party liens.

DATED: April 26, 2002

Respectfully submitted,

By: 

DAVID C. TARDIFF
Petitioner in Pro Per

APPENDIX A

Filed January 29, 1999

MUNICIPAL COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

KIMBERLY BELSHE, as Director of the California Department of Health Services, Plaintiff, v DAVID C. TARDIFF; JANET VALLEJO; and DOES 1 through 10, inclusive, Defendant.	Case No. 96C02721 JUDGMENT BY THE COURT UNDER CODE OF CIVIL PROCEDURE SECTION 437c HON. ELDEN S. FOX, JUDGE

On December 10, 1998, the Honorable Elden S. Fox, Judge, granted plaintiff's motion for summary judgment, denied defendants' cross-motion for summary judgment, and ordered entry of judgment as requested in plaintiff's motion and complaint. The Court ordered plaintiff's counsel to serve a notice of ruling. Thereafter, defendants filed a motion entitled, "Motion to Determine Amount of Judgment." Plaintiff filed opposition to the motion, and defendants filed a reply. Oral argument was heard at 1:30 p.m., on January 21, 1999, before the Honorable Elden S. Fox, Judge. Having considered the papers before it and the oral arguments of counsel, the Court

ORDERED, ADJUDGED AND DECREED that plaintiff shall recover against defendants Vallejo and Tardiff the sum of $10,942.51, plus interest at the rate of 7 percent simple interest per annum from October 4, 1991 (the date of

the Department's last document in the Vallejo matter entitled, "Injury-Related Services Paid by the Medi-Cal Program," attached as exhibit A to the complaint), through and including December 10, 1998, the date the Court ordered entry of summary judgment against defendants Tardiff and Vallejo in the Vallejo matter, for a total of $6,854.55 in prejudgment interest. The Court further ORDERED, ADJUDGED AND DECREED that plaintiff shall recover against defendant Tardiff the sum of $6,850.71, plus interest at the rate of 7 percent simple interest per annum from the October 23, 1992 (the date of the Department's last document in the Thomas matter entitled, "Injury-Related Services Paid by the Medi-Cal Program," attached as exhibit C to the complaint), through and including December 10, 1998, the date the Court ordered entry of summary judgment against defendant Tardiff in the Thomas matter, for a total of $3,525.00 in prejudgment interest. Each side to bear its own attorneys fees and costs. Upon defendants' oral request, a stay on execution of judgment was imposed for 30 days, through February 22, 1999, pending the filing of an appeal by defendants.

DATED: January 29, 1999

ELDEN S. FOX

HONORABLE ELDEN S. FOX, JUDGE

APPENDIX B

Filed March 15, 2000

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

KIMBERLY BELSHE, et al.,	No. BV 22295
Plaintiffs and Respondents,	Beverly Hills Trial Court
v.	No. 96C02721
DAVID C. TARDIFF, et al.,	
Defendants and Appellants.	MEMORANDUM JUDGMENT

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The orders granting respondent's motion for summary judgment and denying appellants' motion for summary judgment and the judgment entered thereon are affirmed. Respondent to recover costs on appeal.

Defendants David C. Tardiff and Janet Vallejo (hereinafter "appellants") appeal from the trial court's order granting summary judgment in favor of plaintiff Kimberly Belshe, as Director of the California Department of Health Services (hereinafter "respondent"), and denying appellants' cross-motion for summary judgment.

On December 23, 1996, respondent filed a complaint against appellants for damages resulting from appellants' alleged failure to pay respondent for the cost of health care services rendered to appellant Vallejo. Vallejo was a Medi-

Cal beneficiary and appellant Tardiff was her attorney for record. The complaint alleges that on April 3, 1989, Vallejo was involved in an accident which caused her injuries. Respondent paid $14,590.01 for the treatment of Vallejo. On January 3, 1990, respondent was notified of a possible third party liability case. Respondent notified appellant Tardiff of Medi-Cal payments for the injuries sustained by appellant Vallejo. On January 23, 1990, respondent mailed appellant Tardiff a notice of lien. Appellant Vallejo's personal injury claim settled for $62,000. Respondent demanded that its claim be paid.

The complaint also alleges that Ryan Thomas was a Medi-Cal beneficiary who contracted AIDS through a blook transfusion on October 20, 1988. Thomas died on November 28, 1991, and appellant Tardiff acted as Thomas' attorney of record. Respondent, through Medi-Cal, paid the sum of $120,578.11 for the treatment of Thomas. On February 5, 1986, appellant Tardiff filed a complaint on behalf of Thomas and against Children's Hospital and Irwin's Memorial Blood Bank. On March 29, 1994, respondent discovered that appellant Tardiff had settled the Thomas matter for $25,000.

In its complaint, respondent alleged that appellants were unjustly enriched by their failure to reimburse respondent for the reasonable value of the health care services provided to the Medi-Cal beneficiaries at the expense of tax payers. Appellants filed their answer to the complaint on August 7, 1997. On October 19, 1998, respondent filed a motion for summary judgment or, in the alternative, summary adjudication of issues. Opposition to the motion was filed by appellants on November 10, 1998, and on November 25, 1998, respondent filed its reply. On November 12, 1998, appellants filed a cross-motion for summary judgment. Opposition to appellants' motion was filed by respondent on November 254, 1996. Prior to the hearing on the motions for summary judgment, both

appellants and respondent stipulated that there were no material facts in dispute.

On December 10, 1998, after consideration of the evidence, the trial court granted respondent's motion summary judgment, and denied appellants' cross-motion for summary judgment. In its order granting summary judgment, the trial court made the following findings: (1) Welfare and Institutions Code section 14124.70 et seq. Provides that if a Medi-Cal beneficiary obtains a settlement or judgment on his or her claim against a third party, the State's Medi-Cal lien for medical services provided to the Medi-Cal beneficiary is to be paid from that money; (2) Welfare and Institutions Code section 14124.73 requires that the Directors of the State Department of Health Services be given written notice by personal service or registered mail if a Medi-Cal beneficiary brings an action or claim against a third party; (3) Welfare and Institutions Code section 14124.76 provides that the Director of the State Department of Health Services must be given notice of settlement or judgment and a reasonable opportunity to perfect and satisfy her lien; (4) Welfare and Institutions Code section 14124.79 provides that in the event any Medi-Cal beneficiary brings an action against the third person who may be liable for the injury, notice of institution of legal proceedings, notice of settlement, and all other required notices must be given to the Director by the attorney retained to assert the beneficiary's claim; and (5) the required notices were not given by the attorney retained to assert the beneficiaries' claims, and the Director was, therefore, unable to perform and satisfy her liens.

Following the order granting respondent's motion for summary judgment, appellants filed a motion to determine the amount of the judgment. On January 29, 1999, the trial court ruled that respondent recover against appellants in the sum of $10,942.51, plus interest at the rate of seven percent simple interest per annum from October 4,

1991, through and including December 10, 1998, the date the court ordered entry of summary judgment against appellant in the Vallejo matter, for a total of $6,854.55 in prejudgment interest. The court further ordered that respondent shall recover against appellant Tardiff the sum of $6,850.71, plus interest at the rate of seven percent simple interest per annum from October 23, 1992, through and including December 10, 1998, the date the court entered summary judgment in the Thomas matter, for a total of $3,525.00 in prejudgment interest. Ease side was ordered to bear its own attorneys fees and costs. This appeal follows.

On appeal, appellants contend that the trial court erred in granting summary judgment in favor of respondent because: (1) no notice of a Medi-Cal lien was given to appellants in the Vallejo matter; (2) a hospital lien is not effective without written notice; (3) to enforce a lien against a person without notice violates his right to due process; and (4) in the minor's compromise case neither appellant nor the carrier had authority to disperse funds.

Summary judgment is properly granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., section 437c, subd. (c); Mars v. Wedbush Morgan Securities, Inc. (1991) 231 Cal.App.3d 1608, 1613.) Inasmuch as summary judgment is a drastic procedure and should be used with caution (Mann v. Cracchiolo (1985) 38 Cal.3d 18, 35), the moving party's papers are strictly construed, while the opposing party's papers are liberally construed (Brantley v. Pisaro (1996) 42 Cal.App.4th 1591, 1601.) A failure of proof as to an essential element of the opposing party's case necessarily renders all other facts immaterial. (see Hunter v. Pacific Mechanical Corp. (1995) 37 Cal.App.4th 1282, 1286.) In determining the propriety of a summary judgment, the reviewing court is limited to facts shown by the evidentiary materials submitted, as well as those admitted and uncontested in the pleadings. (Sacks v. FSR Brokerage, Inc.

(1992) 7 Cal.App.4th 950.) The trial court is required to consider all evidence set forth in the parties' papers, and summary judgment is to be granted if all the papers submitted show there is no triable issue of material fact in the action, thereby entitling the moving party to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

On appeal, this court exercises its independent judgment in determining whether there are no triable issues of material fact and the moving party thus is entitled to judgment as a matter of law. (Union Bank v. Superior Court (1995) 31 Cal.App.4th 573, 579.) We are required to uphold the judgment if it is correct on any ground, regardless of the reasons given by the trial court. (Biljac Associates v. First Interstate Bank (1990) 218 Cal.App.3d 1410, 1419.)

In the instant case, the parties stipulated prior to the hearing on the cross-motions for summary judgment that there were no material facts in dispute. The matter could therefore be determined by the trial court as a matter of law. Specifically, it was undisputed that: (1) appellant Vallejo was Medi-Cal beneficiary; (2) appellant Tardiff was an attorney acting on behalf appellant Vallejo's; (3) pursuant to the Medi-Cal program, the Department pays health care providers for services provided to persons eligible for Medi-Cal; (4) on April 3, 1989, appellant Vallejo was involved in an accident that caused her injuries; (5) respondent through Medic-Cal, paid the sum of $14,590.01 for the medical care and treatment for the injuries sustained by appellant Vallejo; (6) on January 3, 1990, the County of Los Angeles Treasurer-Tax Collector notified respondent of a possible third party liability case, and notified appellant Tardiff of Medi-Cal payments for the injuries sustained by appellant Vallejo; (7) on January 23, 1990, respondent mailed to appellant Tardiff a notice of lien, pursuant to Welfare and Institutions Code section 14124.70; (8) appellant Vallejo's personal injury claim settled for $62,000; (9) respondent demanded that is claim be paid in the Vallejo matter no part

of the $14,590.01 has been paid; (10) decedent Thomas was a Medi-Cal beneficiary; (11) on October 20, 1981, Thomas contracted AIDS through a blood transfusion and Thomas died as a result thereof on November 28, 1991; (12) appellant Tardiff acted on behalf of Thomas; (13) respondent, through Medi-Cal, paid the sum of $120,578.11 for the medical care and treatment of decedent Thomas; (14) on February 5, 1989, a complaint was filed by appellant Tardiff on behalf of Thomas; (15) respondent was notified of the case through a subpoena for medical records; (16) on March 29, 1991, appellant Tardiff settled the Thomas lawsuit for $25,000; and (17) on March 29, 1994, respondent discovered the settlement in Thomas.

"California participates in the Medicaid program through its California Medical Assistance program ('Medi-Cal'), which provides medical services to aged, disabled, and needy persons. [Citations.] Department of Health Services v. Superior Court (1991) 232 Cal.App.3d 776.) In California, the statutes pertaining to the Medi-Cal program are set forth at Welfare and Institutions Code section 14000 et seq. Welfare and Institutions Code section 14008.6[1] requires Medi-Cal applicants or beneficiaries to assign to the State of California any rights to payments from third parties. Section 14008.6 also provides that the receipt of Medi-Cal services acts as an assignment by operation of law. Section 14124.71, subdivision (a) provides, in part, that: "When benefits are provided or will be provided to a beneficiary under this chapter because of an injury for which another person is liable or for which a carrier is liable . . . the director shall have a right to recover from such persons or carrier the reasonable value of benefits so provided." Further, Section 14124.73, subdivision (c) provides, in part, that "any settlement, judgment or award obtained is subject to the Director's claim for reimburse-

[1] All further references will be to the Welfare and Institutions Code unless otherwise stated.

ment of benefits provided to the beneficiary under the Medi-Cal program." Section 14124.73, subdivision (a) provides: "If either the beneficiary or the director brings an action or claim against such third person or carrier the beneficiary or the director shall within 30 days of filing the action give the other written notice by personal service or registered mail of the action or claim, and of the name of the court or state or local agency in which the action or claim is brought. Proof of such notice shall be filed in such action or claim." Section 14124.76 provides: "No judgment, award, or settlement in any action or claim by a beneficiary to recover damages for injuries, where the director has an interest, shall be satisfied without first giving the director notice and a reasonable opportunity to perfect and satisfy his lien." Section 14124.79 provides, in part, that: "In the event that the beneficiary . . . brings an action against the third person who may be liable for the injury, notice of institution of legal proceedings, notice of settlement and all other notices required by this code shall be given to the director in Sacrament . . . All such notices shall be given by the attorney retained to assert the beneficiary's claim, or by the injured party beneficiary, his guardian, . . . if no attorney is retained."

The above referenced sections were referred to with approval in Kizer v. Ortiz (1990) 219 Cal.App.3d 1055, 1058-1059. There, the court reversed an order denying the director's Medi-Cal petition: "If the Medi-Cal beneficiary brings an action against the third person believed to be civilly liable for the injuries, he or she must give notice to the Director of the Department within 30 days of filing the action. (§ 14123.73.) The law specifically describes how to give the required notice. (§ 14124.79.) [Fn. 3: "Section 14124.79 requires all notices required by the code to be given to the director in Sacramento except in cases where the director specifies that notice shall be given to the Attorney General. All such notices shall be given by the attorney retained to assert the beneficiary's claim . . ."

"Notice is again required if a settlement or judgment is received: 'No judgment, award, or settlement in any action or claim by a beneficiary to recover damages for injuries, where the director has an interest, shall be satisfied without first giving the director notice and reasonable opportunity to perfect and satisfy his lien.' (§ 14126.76.) Again, the law provides how notice is to be given. (§ 14124.79.)"

In Kizer v. Hirata (1993) 20 Cal.App.4 841, 844, the California Department of Health Services brought an action for money damages for breach of a statutory duty, conversion, and unjust enrichment against a medical patient and her attorney. The Kizer court stated that "(w)hen the state Medi-Cal program pays for medical services rendered to an injured person who has a claim for damages for the injury for which he is treated, the state is granted a lien upon the injured person's recovery, whether by judgment or settlement, to the extent of Medi-Cal benefits it has provided." In Kizer v. Ortiz (1990) 219 Cal.App.3d 1055, 1061, the court held that "the superior court has no discretion to disallow a Medi-Cal lien." Moreover, the California State Bar Court has held that an attorney who fails to give the director required statutory notices is subject to discipline. This is true even if where the attorney was not actually aware of the Medi-Cal lien, but took no steps to ascertain whether his client had Medi-Cal coverage or to investigate his obligations under the law. (See In the Matter of Riley (1994) 3 Cal.State Bar Ct. Rptr. 91, 102.)

Here, the recovery rights of Vallejo and Thomas to payment from third parties arising from their injuries were assigned to the State of California. Appellants Tardiff and Vallejo were required by law to honor the Medi-Cal liens. There is no triable issue of fact or law that appellants disregarded their statutory duty with regard to the Medi-Cal liens by failing to provide the Director with all statutory notices which permit Medi-Cal liens to be perfected and

recovered from judgments, settlements, or award. This is true even as to the Thomas matter, where funds were placed into a blocked account pursuant to a minor's compromise. The director was entitled to notice of settlement in the matter and had no obligation to perfect the Medi-Cal lien until notice from appellant Tardiff. (see Kizer v. Ortiz (1990) 219 Cal.App.3d 1055, 1059-1060.)

In their brief, appellants' erroneously rely upon the case of Brian v. Christensen (1973) 35 Cal.App.3d 377, for the proposition that an attorney is under no obligation to give notices to the Department of Health Services. In Brian, the court relied upon Section 14117 which was repealed in 1976 and replaced by Section 14124.70 et seq. Again, Section 14124.79 expressly imposes a duty upon any attorney retained by the Medi-Cal beneficiary to give to the director all notices which would permit the director a reasonable opportunity to perfect and satisfy any Medi-Cal lien. Appellants' reliance upon Kaiser Foundation Health Plan, Inc. v. Aquiluz (1996) 47 Cal.App.4th 302, and Miller v. Rau (1965) 216 Cal.App.2d 68, is also misplaced. Neither case involves the Medi-Cal recovery program. Moreover, neither case addresses section 14124.70 et seq. Appellants' also erroneously argue that the liens at issue are for hospital bills and that Civil Code section 3045.1 et seq. Applies. Contrary to appellants' arguments on this issue, section 14124.78 precludes the applicability of hospital lien statutes to Medi-Cal liens.

Next, appellants' claim that the Medi-Cal recovery statutes fail to comport with due process.

In their brief, appellants argue that the director failed to give them notice of the Medi-Cal liens, and that appellant Tardiff had no right to withhold money not authorized by statute without notice of a lien claimant. Appellants' arguments on this issue are not persuasive. Sections 14124.73, 14124.76, and 14124.79, mandate that

notice be given by the Medi-Cal beneficiary and the Medi-Cal beneficiary's attorney, if one is retained. The statutes impose no duty upon the director to give notice to the Medi-Cal beneficiary, or his or her attorney.

Finally, appellant argues that the trial court erred in awarding prejudgment interest.

Pursuant to Code of Civil Procedure section 3287, subdivision (a), prejudgment interest is recoverable in any action in which the damages are certain or capable of being made certain by calculation and the right to recover such damages is vested in the plaintiff on a particular day. The test for determining "certainty" is whether the defendant actually knows the amount owed or could have computed the amount from reasonably available information. (See Wisper Corp. v. California Commerce Bank (1996) 49 Cal.App.4th 958, 960.)

Here, appellant Tardiff settled the Vallejo case on October 13, 1989, and the Thomas case on March 29, 1991. On those dates, the Medi-Cal liens vested. The net amount due on each settlement was calculated by reference to sections 14124.72, subdivision (d), and 14124.78. The damages herein were certain because appellants could have computed the amount from reasonably available information. The trial court therefore properly awarded prejudgment interest.

Accordingly, the trial court's orders granting respondent's motion for summary judgment and denying appellants' motion for summary judgment, and the judgment entered thereon are affirmed.

s/ Edward Kakita
Kakita, J.

We concur.

s/ Schiavelli
Schiavelli, P.J.

s/ Todd
Todd, J.

APPENDIX C

Filed

DAVID C. TARDIFF, SBN 33674
LAW OFFICES OF DAVID C. TARDIFF
8888 OLYMPIC BOULEVARD
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(310) 247-8237

Attorney for Plaintiff in Pro Per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID C. TARDIFF, Plaintiff, vs. STATE OF CALIFORNIA, DEPARTMENT OF HEALTH SERVICES, KIMBERLY BELSHE, as an individual, Defendant	Case No. 00-0737 4 NM(Ex) COMPLAINT FOR VIOLATION OF CIVIL RICHTS (Civil Rights Act Title 42 USC §§ 1983 and 1988 and Title 28 USC § 1331)

Plaintiff David C. Tardiff complains against Defendants State of California, Department of Health Services, Kimberly Belshe and allege as follows:

JURISDICTION AND VENUE

I.

This action arises out of the Constitution of the United States particularly the Fifth and Fourteenth Amendments to the Constitutions of the United States, and under the laws and statutes of the United States particularly the Civil Rights Act, Title 42 USC §§1983.

II.

The jurisdiction of this court is also invoked under the provisions of Title 28 USC §§1331.

III.

Venue is placed in this district because it is where all the parties reside and where the events complained of occurred.

PARTIES

IV.

Plaintiff, David C. Tardiff, is now, and at all times mentioned was a citizen of the United States of America and resident of Los Angeles, Los Angeles County, California. Plaintiff is an attorney and at all times herein relevant represented himself and Janet Vallejo. The Defendant is a Public entity and the Department of Health Services is a department of the State of California. Kimberly Belshe is the Director of Department of Health Services for the State of California.

CAUSE OF ACTION

V.

On December 23, 1996, the Defendants filed a complaint against Plaintiff David Tardiff and Janet Vallejo

alleging the failure to pay Janet Vallejo's Medi-Cal lien. On December 10, 1998 in the Beverly Hills Municipal Court a Summary Judgment Motion was heard on undisputed facts. One of the undisputed facts was that the first notice Plaintiff had of the existence of a Medi-Cal lien was some Ninety (90) days after the funds were fully disbursed to the client. The claim of the Defendants in the underlying case is that an attorney is responsible for the payment of a Medi-Cal lien from clients' settlement even though the third party (here attorney Tardiff) was unaware of the existence of a Medi-Cal lien. Such an interpretation of third party lien claim is a denial of due process of law under the Fifth and Fourteenth Amendments to the United States Constitution as well as the United States Supreme Court case of Sniadach vs. Family Finance Corp. (1969) 395 U.S. 337 (23 L.Ed.2d 349, 89 S.Ct. 1820).

VI.

In spite of that due process argument both the Municipal Court entered judgment against Plaintiff for an amount in excess of $10,000.00 plus interest. A timely appeal was made to the Appellate Division of the Los Angeles Superior Court who affirmed the trial courts ruling.

A request that the appellate department transfer the case to the Court of Appeal was denied by the appellate department and a Petition for Writ of Certiorari was filed in the California Supreme Court on May 2, 2000.

On May 19, 2000 the California Supreme Court case number S088003, ordered the matter transferred to the Court of Appeal, Second Appellate District and on May 31, 2000 Division 3 of the Court of Appeals Second Appellate District denied the "Petition for Writ of Mandate-Prohibition".

The Plaintiff has filed a second petition in the Supreme Court of the State of California requesting a hearing on the due process issue because of its general importance to lawyers practicing within the State of California.

VII.

Other than the proceedings in the state courts, no proceedings have been filed in the federal Courts under Title 42 USC §§1983 and 1988 or any other provision of federal law.

VIII.

It is Plaintiffs position that the State of California's attempt to enforce third party medical liens against an attorney having no knowledge of the existence of that lien before he disburses the funds to his client is a depravation of rights and privileges secured by the constitution and laws of the United States including the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States within the meaning of Sections 42 USC §1983.

IX.

Plaintiff has been required to expend approximately 250 hours of time in defending Defendants claim in the state courts of California and pursuant to 42 USC §1988, Plaintiff is entitled to a reasonable allowance for attorney fees as part of his costs.

WHEREFORE, Plaintiff requests judgment against Defendants and each of them:

1. For an injunction against the State of California preventing the collection of third party liens under the circumstances as described above;
2. Twenty-five Thousand Dollars ($25,000.00) as compensatory damages;
3. Fifty Thousand Dollars ($50,000.00) as punitive damages;
4. Reasonable attorney fees;
5. Costs of suit herein;
6. For such other and further relief as the court deems just and proper.

DATED: June 27, 2000 LAW OFFICE

By:/s/ David C. Tardiff

DAVID C. TARDIFF, SBN. 33674

APPENDIX D

Filed July 19, 2000

Court of Appeal, Second Appellate District, Division Three
No. B141591

S089103

IN THE SUPREME COURT OF CALIFORNIA

En Banc

DAVID C. TARDIFF, Petitioner,

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent;

KIMBERLY BELSHE, [Director Calif. Dept Hlth/Svcs.], Real Party in Interest.

Petition for review DENIED.

GEORGE
Chief Justice

APPENDIX E

Filed February 7, 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID C. TARDIFF,	Case No. CV 00-7374-NM (Ex)
Plaintiff,	ORDER GRANTING DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE
STATE OF CALIFORNIA, DEPARTMENT OF HEALTH SERVICES, KIMBERLY BELSHE, as an individual,	
Defendants	

Pursuant to Local Rule 7.11, the Court finds the instant motion amenable to decision without oral argument.

I. INTRODUCTION

Plaintiff David C. Tardiff, an attorney who represented two Medi-Cal beneficiaries in personal injury actions in state court during the 1990s, filed a 42 U.S.C. § 1983 action in this court against the California Department of Health Services and its director, Kimberly Belshe, as an individual, alleging that Health Services and its director, Kimberly Belshe, as an individual, alleging the Health Services' enforcement of third-party Medi-Cal liens against him violated due process. Before the court is Defendant Health Services' motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. BACKGROUND[1]

In the underlying state court action, Kimberly Belshe ("Belshe"), as Director ("Director") of the California Department of Health Services ("Health services"), filed a complaint in Beverly Hills Municipal Court (Case No. 96C02721) on December 23, 1996, against attorney David C. Tardiff ("Tardiff") and his former client, Janet Vallejo ("Vallejo"), after the Director discovered that Tardiff had obtained and disbursed two personal injury settlements on behalf of his Medi-Cal beneficiary clients, Vallejo and Ryan Thomas ("Thomas") without giving the Director the statutorily mandated notices set forth in California Welfare and Institutions Code sections 14124.73, 14124,76, and

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[1] The following facts are undisputed unless otherwise noted. Both parties have requested judicial notice of various court records from the underlying state court action, Kimberly Belshe, as Director of the Department of Health Services, State of California v. David C. Tardiff, Janet Vallejo et al., Beverly Hills Municipal Court Case No. 96C02721. Def. Req. Judicial Notice; Pl. Req. Judicial Notice, Def. Supplemental Req. Judicial Notice. The court finds that all of the materials of which the parties requested judicial notice are properly the subject of judicial notice because as court records, "they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed.R.Evid. 201(2). Accordingly, this court takes judicial notice in accordance with Federal Rule of Evidence 201(d). The summary of undisputed facts here is derived from those records.

14124.79.[2] Def. Req. Judicial Notice Ex. D at 2:1-5, 2:15-18; 6:10-12, 6:27, 7:2. The Director's complaint sought damages to recoup Medi-Cal's health care expenditures on behalf of Vallejo and Thomas. Def. Req. Judicial Notice Ex. D at 2:15-18.

On April 3, 1989, Vallejo was involved in an accident that caused her injuries, the treatment for which Health Services paid $14,590.01. Def. Req. Judicial Notice Ex. D at 2:6-8, 6:14-18. On January 3, 1990, the Director was notified by the Los Angeles County Treasurer-Tax collector of a possible third party liability case. Def. Req. Judicial Notice Ex. D at 2:8-9, 6:18-20. The Director, in turn, notified Tardiff that Medi-Cal payments were disbursed for the injuries sustained by Vallejo. Def. Req. Judicial Notice Ex. D at 2:9-11, 6:20-22. On January 23, 1990, the Director mailed Tardiff a notice of a Medi-Cal lien for the amount of Health Services' payments of Vallejo's behalf. Def. Req. Judicial Notice Ex. D at 2:11-12, 6:22-24. Vallejo's personal injury claim settled for $62,000, and the Director demanded payment of its claim. Def. Req. Judicial Notice Ex. D at 2:12-14, 6:24-26.

Tardiff's client Thomas, a minor, contracted AIDS through a blood transfusion on October 20, 1981, received medical treatment for which Health Services paid $120,578.11, and died on November 28, 1991. Def. Req. Judicial Notice Ex. D t 2:15-17, 2:18-20, 6:27-7:4. On February 5, 1989, Tardiff filed a complaint on behalf of

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[2] Welfare and Institutions Code section 14124.79 states, "In the event that the beneficiary, his guardian, conservator, personal representative, estate or survivors or any of them brings an action against the third persons who may be liable for the injury, notice of institution of legal proceedings, notice of settlement and all other notices required by this code shall be given to the director in Sacrament ... All such notices shall be given by the attorney retained to assert the beneficiary's claim, or by the injured party beneficiary, his guardian, conservator, personal representative, estate or survivors, if no attorney is retained."

Thomas, and Health Services was notified of the lawsuit through a subpoena for medical records. Def. Req. Judicial Notice Ex. D at 2:20-22, 7:4-7. On March 29, 1991, Tardiff settled Thomas's lawsuit for $25,000. Def. Req. Judicial Notice Ex. D at 2:22-23, 7:7-8. Three years later, on March 29, 1994, Health Services discovered the settlement of Thomas's lawsuit and demanded payment. Def. Req. Judicial Notice Ex. D at 7:9-10.

In its state court complaint, the Director alleged that Tardiff and Vallejo were unjustly enriched by their failure to reimburse Health Services for the reasonable value of the health care services provided to Vallejo and Thomas at the expense of the taxpayers. Def. Req. Judicial Notice Ex. D at 2:24-27. Tardiff and Vallejo answered, claiming lack of notice of the liens.[3] On October 19, 1998 the Director filed a motion for summary judgment or, in the alternative, summary adjudication of the issues. Def. Req. Judicial Notice Ex. D at 2:28-3:2. The Director's motion was met by Tardiff and Vallejo's cross-motion for summary judgment. Def. Req. Judicial Notice Ex. D at 3:2-5. Following briefing and prior to the hearing on the cross-motions for summary judgment, then-Defendants Tardiff and Vallejo and then-Plaintiff Director stipulated that there were no material facts in dispute. Def. Req. Judicial Notice Ex. D at 3:7-9.

On December 10, 1998, the trial court granted the Director's motion for summary judgment and denied Tardiff and Vallejo's cross-motion for summary judgment. Def. Req. Judicial Notice Ex. D at 3:10-12. In its order, the trial court made the following findings:

> (1) Welfare and Institutions Code sections 14124.70 et seq. Provides that if a Medi-

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[3] As Tardiff argued in his appeal to the California Court of Appeal, "lack of notice was the principal if not the only issue in the trial proceedings ..." Def. Supplemental Req. Judicial Notice Ex. K at 6:2-4.

> Cal beneficiary obtains a settlement or judgment on his or her claim against a third party, the State's Medi-Cal beneficiary is to be paid from that money; (2) Welfare and Institutions Code section 14124.73 requires that the Directors of the State Department of Health Services be given written notice by personal service or registered mail if a Medi-Cal beneficiary brings an action or claim against a third party; (3) Welfare and Institutions Code section 14124.76 provides that the Director of the State Department of Health Services must be given notice of settlement or judgment and a reasonable opportunity to perfect and satisfy her lien; (4) Welfare and Institutions Code section 14124.79 provides that in the event any Medi-Cal beneficiary brings an action against the third person who may be liable for the injury, notice of institution of legal proceedings, notice of settlement, and all other required notices must be given to the Director by the attorney retained to assert the beneficiary's claim; and (5) the required notices were not given by the attorney retained to assert the beneficiaries' claims, and the Director was, therefore, unable to perfect and satisfy her liens.

Def. Req. Judicial Notice Ex. A at 2:10-3:4; Ex. D at 3:14-4:7. Final judgment was entered for the Director on January 29, 1999, against Tardiff and Vallejo. Def. Req. Judicial Notice Ex. B. Tardiff appealed to the Los Angeles County Superior Court Appellate Department (Case No. BV22295), claiming that the trial court erred in granting the Director's motion for summary judgment because:

(1) no notice of a Medi-Cal lien was given

> to [Tardiff or Vallejo] in the Vallejo matter; (2) a hospital lien is not effective without written notice; (3) to enforce a lien against a person without notice violates his right to due process; and (4) in the [Thomas] compromise case neither [Tardiff] nor the carrier had authority to dispense funds.

Def. Req. Judicial Notice Ex. D at 4:24-5:3. On March 15, 2000, the Appellate Department affirmed the trial court with a twelve-page memorandum opinion, rejecting all four of Tardiff's claims. Def. Req. Judicial Notice Ex. D. On April 12, 2000, the Appellate Department denied Tardiff's petition for rehearing after judgment or, in the alternative, certification to the California Court of Appeal. Def. Req. Judicial Notice Ex. E. On May 2, 2000, Tardiff filed a "Petition for Writ of Certiorari" (Petition for Review) in the California Supreme Court, Def. Supplemental Req. Judicial Notice Ex. L, which, on May 19, 2000 (Case No. S088003), ordered the case transferred to the California Court of Appeal, Second Appellate District, Def. Req. Judicial Notice Ex. H. Without opinion, the Court of Appeal (Case No. B141591) denied Tardiff's "Petition for Writ of Mandate-Prohibition" on May 31, 2000. Def. Req. Judicial Notice Ex. I. Appealing the Court of Appeal's ruling, Tardiff filed a second petition for review to the California Supreme Court, which was denied on July 19, 2000 (Case No. S089103). Def. Req. Judicial Notice Ex. J.

On July 1, 2000, twelve days before the California Supreme Court denied Tardiff's second and final petition, Tardiff filed the instant complaint in federal court against Health Services, and Director Belshe, individually.[4] The

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[4] Defendant Health Services appears to assume that there are three defendants in this case: (1) Health Services; (2) the State of California; and (3) Belshe. Def. Mot. Dismiss at 2 n. 1. While the caption of the case is ambiguous, Tardiff makes clear that he is suing only two parties.

complaint alleges that Health Services' attempt to enforce its Medi-Cal lien against Tardiff without providing him notice of the existence of the lien before he disbursed settlement proceeds to his clients is violative of due process.[5] Plaintiff Tardiff seeks three forms of relief: (1) "an injunction against the State of California preventing the collection of third party liens under the circumstances as described" in the complaint; (2) $25,000 as compensatory damages; and (3) $50,000 as punitive damages. Compl. At 3:25-28. On October 27, 2000, Defendant Health Services, without answering Plaintiff Tardiff's complaint, filed a motion to dismiss.

Before this court is Defendant Health Services' motion to dismiss. Defendant brings is motion on three grounds:[6] (1) that this court should dismiss Defendant Health Services pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) because the instant action is barred by the doctrine of res judicata and 12 U.S.C. § 1738's "full faith and credit" provisions, Def. Mot. Dismiss at 5:13-7:3; (2) that this court should dismiss defendant Health Services pursuant to Federal Rule of Civil Procedure

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In his Certification as to Interested Parties, filed concurrently with his complaint, Plaintiff lists only Defendants Health Services and Belshe in addition to himself. Pl. Certification at 1:21-23.

[5]"[T]he State of California's attempt to enforce third party medical liens against an attorney having no knowledge of the existence of that lien before he disburses the funds to his client is a deprivation of rights and privileges secured by the constitution and laws of the United States including the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States within the meaning of sections [sic] 42 USC § 1983." Compl. At 3:14-18.

[6] Defendant Health Services' motion is not brought on behalf of Defendant Belshe. "Kimberly Belshe is not represented by the Attorney General. Health Services' motion to dismiss does not include arguments on Kimberly Belshe's behalf." Def. Reply in Support of Mot. Dismiss at 5 n.4.ourt A

12(b)(1) because it is cloaked with Eleventh Amendment sovereign immunity, Def. Mot. Dismiss at 7:8-8:2; and (3) that this court should dismiss Defendant Health Services pursuant to Federal Rule of Civil Procedure 12(b)(1) because it is not a "person" within the meaning of 42 U.S.C. § 1983, Def. Mot. Dismiss at 8:7-24.

III. DISCUSSION

Defendant Health Services' first ground for dismissal is that the instant action should be dismissed pursuant to Federal Rules 12(b)(1) and 12(b)(6) because it is barred by the doctrine of res judicata and 28 U.S.C. § 1738's "full faith and credit" provisions. Def. Mot. Dismiss at 5:13-7:3.

a. Rule 12(b)(6): Res Judicata

Dismissal under Rule 12(b)(6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the complaint. See Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987.) The court must view all allegations in the complaint in the light most favorable to the non-movant and must accept all material allegations - as well as any reasonable inferences to be drawn from them - as true. See North Star v. Arizona Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983).

On a motion to dismiss under Rule 12(b)(6), a court may take judicial notice of prior proceedings without converting the motion into one for summary judgment. See Emrich v. Touche Ross & Co., 846 F.2d 1190, 1198 (9th Cir. 1988) ("[W]hen passing on a motion attacking the legal efficacy of the plaintiff's statement of his claim, the court may properly look beyond the complaint only to items in the record of the case or to matters of general public record.") (citing Phillips v. Bureau of Prisons, 591 F.2d 966,

969 (D.C. Cir. 1979); 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357 at 593 (1969))).

"The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute, which provides that state judicial proceedings 'shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such state ... from which they are taken.'" Marrese v. American Ac. Of Orthopaedic Surg., 470 U.S. 373, 380 (1985) (quoting 28 U.S.C. § 1738). "Res judicata is often analyzed ... to consist of two preclusion concepts: 'issue preclusion' and 'claim preclusion.' Issue preclusion [also referred to as collateral estoppel] refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided ... Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that has never been litigated, because of a determination that it should have been advanced in an earlier suit." Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77 n.1 (1984). The Supreme Court has held that federal claims, including civil rights claims, may be subject to both types of preclusive effects of state court judgment. See id. At 85 ("[W]e must reject the view that § 1983 prevents the judgment in petitioner's state-court proceeding from creating a claim preclusion bar in this case."); Allen v. McCurry, 449 U.S. 90 (1980) (rejecting the view that state court judgments have no issue preclusive effect in § 1983 suits).

To determine the preclusive effect of a state court judgment, federal courts must "refer to the preclusive law of the State in which judgment was rendered." Marrese, 470 U.S. at 380; see also Migra, 465 U.S. at 81.

1. Issue Preclusion/Collateral Estoppel

Under California law, "'[a] prior determination by a tribunal will be given collateral estoppel effect when (1) the issue is identical to that decided in a former proceeding; (2) the issue was actually litigated and (3) necessarily decided; (4) the doctrine is asserted against a party to the former action or one who was a privity with such a party; and (5) the former decision is final and was made on the merits.'" McCutchen v. City of Montclair, 73 Cal.App.4th 1138, 1144 (1999) (quoting Kelly v. Vons Companies, Inc., 67 Cal.App.4th 1329 (1998)). In the instant case, issue preclusion applies to Plaintiff Tardiff's claim that due process required Health Services to give Tardiff notice of its Medi-Cal lien before Tardiff disbursed settlement proceeds to his clients because all five prongs of the California test are satisfied. See id.

First, Plaintiff's present claim that "to enforce a third party medical lien against an attorney having no knowledge of the existence of the lien .. is a deprivation of ... due process ...," Compl. At 3:14-17, is clearly identical to that decided in the former proceeding, in which he asserted that "to enforce a lien against a person without notice violates his right to due process," Def. Req. Judicial Notice Ex. D. at 4:28-5:1. Second, the due process issue was clearly "actually litigated," McCutchen, 73 Cal.App.4th at 1144, as evidenced by the Superior Court Appellate Division's memorandum order, which addressed Tardiff's due process claim. Def. Req. Judicial Notice Ex. D at 4:28-5:1, 1:15-25. Third, because the issue was raised by Tardiff on appeal of an adverse summary judgment order on stipulated facts, the Appellate Division necessarily considered and rejected Tardiff's argument, Def. Req. Judicial Notice Ex. D at 11:15-25, rendering the issue "necessarily decided," McCutchen, 73 Cal.App.4th at 1144. Fourth, the issue is clearly "being asserted against a party to the former action or one who was in privity with such a party," id., because the Director

of Health Services acting in her official capacity in the first lawsuit and the Department of Health Services in this lawsuit are functionally the same entity. Lastly, "the former decision is final and was made on the merits," id., because the trial court entered judgment for the Director on cross-motions for summary judgment on stipulated facts and the Appellate Division, on de novo review and considering Tardiff's due process argument, affirmed the trial court.

Plaintiff's main objection to applying issue preclusion to this case is that the trial court's judgment makes no mention of his lack of notice or due process arguments and the Appellate Division's memorandum opinion "does not decide the due process issue, it merely restates the problem in a slightly different form." Pl. Opp'n to Mot. Dismiss at 4:17-22. Plaintiff's reasoning is flawed. The state court's judgment need not make an express rejection of Plaintiff's arguments in order to have considered and rejected them. In the case of Plaintiff's lack of notice argument, Tardiff admitted in his brief to the California Court of Appeal that the trial court had considered the issue when he stated, "lack of notice was the principal if not the only issue in the trial proceedings ..." Def. Supplemental Req. Judicial Notice Ex. K at 6:2-4. Because Plaintiff concedes that the trial court considered his lack of notice argument, it logically follows that when that court made its finding that notice was required to be given by Tardiff to the Director - not vice versa - the trial court necessarily rejected Tardiff's lack of notice argument. In the case of Plaintiff's due process argument, the trial court made no mention of due process in its judgment because Plaintiff did not raise the due process issue until the case was before the Appellate Division. Once before the Appellate Division, the due process argument was raised, considered, and rejected by the Appellate Division, as its opinion indicates. That the Appellate Division's discussion of due process was not thorough enough to satisfy Tardiff does not render issue preclusion inapplicable to this case.

Alternatively, Tardiff argues that California's "public interest exception" to the collateral estoppel doctrine should prevent collateral estoppel from being applied to the due process issue in this case. Pl. Opp'n to Mot. Dismiss at 6:1-7:2. As articulated by the California Supreme Court, "[t]he public interest exception is an entremely narrow one; we emphasize that it is the exception, not the rule, and is only to be applied in exceptional circumstances." Arcadia Unified School Dist. V. State Dep't of Educ., 2 Cal.4th 251, 259 (1992). Even though the few California cases that have applied the exception have not articulated a bright-line rule for when those "exceptional circumstances" exist, one commonality emerges from those cases; the exception has been applied to prevent collateral estoppel from being asserted only against a state or its agencies. See Housing Authority v. Workers' Compensation Appeals Board, 60 Cal.App.4th 1076, 1083-86 (1998) (surveying the California courts' application of the public interest exception). While there may be instances in which the public interest exception applies to parties other than the state, Plaintiff has failed to make a compelling case and attorneys who fail to comply with the notice requirements of Welfare and Institutions Code section 14124.70 et seq. present such a case. Accordingly, Plaintiff Tardiff is barred by the issue preclusion/collateral estoppel doctrine from relitigating the due process claim raised and adjudicated by the state courts.

2. Claim Preclusion

Claim preclusion "operates as a bar to the maintenance of a second suit between the same parties on the same cause of action.'" Kelly, 67 Cal.App.4th at 1335 (quoting People v. Damon, 51 Cal.App.4th 958, 969 (1996)). '[T]he firmly settled rule in California for determining a cause of action is the primary rights theory." Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc., 29 Cal.App.4th

1828, 1835 (1994). "Under this theory, the underlying right sought to be enforced determines the cause of action." Id.

Here, the primary right that Plaintiff Tardiff raises in his section 1983 cause of action is an alleged due process right to notice of the Medi-Cal liens on his clients' settlements before he disbursed the settlement proceeds to them. This due process right to notice is the same due process right Tardiff litigated before the state courts as an affirmative defense to the Director's lien enforcement action. Plaintiff argues that "lack of notice was raised as an affirmative defense but there is no way that it could be considered a valid counterclaim for damages." Pl. Opp'n to Mot. Dismiss at 3:12-15.[7] To the extent Plaintiff is asserting that he could not have brought a section 1983 claim in state court, Plaintiff is mistaken. In Clark v. Yosemite Community College District, 785 F.2d 781 (1986), the Ninth Circuit, applying California law, stated, "Although [Plaintiff] did not raise a section 1983 claim in the state proceeding, the doctrine of res judicata applies not only to those claims actually litigated in the first action but also to those which might have been litigated as part of that cause

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[7] In his Opposition to Health Services' Motion to Dismiss, Plaintiff Tardiff relies heavily on a Seventh Circuit preclusion case, Jones v. City of Alton, 757 F.2d 878 (7th Cir. 1985), in support of his argument that the state courts in the underlying action never actually considered and decided his due process defense. Pl. Opp'n to Mot. Dismiss at 4:23-5:24. Jones was an employment discrimination case brought under Title VII and section 1983 in which the Seventh Circuit held that res judicata did not bar plaintiff Jones' claims because the defendant city did not sustain its "burden of showing with clarity and certainty that the [discrimination] issue was or could have been determined by the prior judgment." Id. At 886. The court based this finding on its belief that "plaintiff [Jones] was prevented from presenting his evidence on the mistaken theory that racial discrimination was irrelevant to his discharge." Id. Jones is clearly inapposite to this case. First, Jones

of action." Id. At 786-87 (citing Scoggin v. Schrunk, 522F.2d 436, 437 (9th Cir. 1975), cert.denied, 423 U.S. 1066 1976)). "a section 1983 claim may be brought in California state courts." Id. (citing Brown v. Pitchess, 13 Cal.3d 518, 521-23 (1975); Trujillo v. County of Santa Clara, 775 F.2d 1359, 1366 (9th Cir. 1985)).

To the extent Plaintiff is asserting that, as a defendant in the state proceeding, he could not have raised as section 1983 counterclaim, Plaintiff is again mistaken. California possesses a compulsory counterclaim statute – section 426.30 of the California Code of Civil Procedure,[8] the statutory predecessor of which the California Supreme Court deemed "a 'special aspect of res judicata'" – that "bars claims which the party failed to assert by cross-

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[7] applied Illinois - not California - preclusion law. See id. At 884-86. While the underlying generral principles of the two states' preclusion law may be the same, neither Tardiff's brief nor the Jones opinion establishes that Illinois' tests for claim and issue preclusion are the same as California's. Second, unlike plaintiff Jones, Plaintiff Tardiff prescented all of his evidence to the state courts in the underlying case. Indeed, Tardiff stipulated to all the facts before the state courts. Finally, the decision of the Superior Appellate Division leaves no doubt that in rejecting Tardiff's due process argument it found that Tardiff's own failure to give the required notice to the Health Services Director as mandated by statute precluded a finding that Tardiff's due process rights had been violated by any lack of notice to him by the Director

[8] Section 426.30, subdivision (a) provides, in pertinent part: "[I]f a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other cause of action assert against the plaintiff the related cause of action not pleaded." Cal. Civ. Proc. Code § 426.30. "Related causes of action" is defined by section 426.10, subdivision (c), as "a cause of action which arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint." Cal. Civ. Proc. Code § 426.10.

complaint in a previous action arising from the same occurrence." Hulsey v. Koehler, 218 Cal.app.3d 1150, 1156 (1990) (quoting Clark v. Lesher, 46 Cal.2d 874, 881-82 (1956)). Accordingly, Plaintiff's claims arising out of Health Services' enforcement of its Medi-Cal liens are barred by the doctrine of claim preclusion.

Because Plaintiff's claims are barred by res judicata, the court grants Defendant's motion to dismiss under Rule 12(b)(6). As set forth below, Plaintiff's claims are also jurisdictionally barred. Because any amendment to the complaint would be futile, the dismissal is with prejudice.

B. Rule 12(b)(1): Rooker-Feldman Doctrine

Rule 12(b)(1) addresses a federal court's subject matter jurisdiction. See Fed. R. Civ. Pro. 12(b)(1). Ordinarily, a res judicata argument cannot be asserted pursuant to Rule 12(b)(1) because "the doctrine of res judicata or issue preclusion in no way implicates jurisdiction. Res judicata challenges may properly be raised via a motion to dismiss for failure to state a claim under Rule 12(b)(6)." Thompson v. County of Franklin, 15 F.3d 245, 253 (2d Cir. 1994) (citing 5A Wright & Miller § 1357, at 356 n. 69).

Nevertheless, the Ninth Circuit has recognized another side of the preclusion coin that is jurisdictional: the so-called Rooker-Feldman doctrine. See Robinson v. Ariyohsi, 753 F.2d 1468, 1472 (9th Cir. 1985), vacated on other grounds, 477 U.S. 902 (1986). As explained by the Ninth Circuit in Robinson:

> Faced with the task of deciding our power to review constitutional issues which arise from a state court proceeding, we view the res judicata requirement of full and fair opportunity to litigate, and the Feldman

> "inextricably intertwined" barrier as two sides of the same coin. Under the rubric of either "jurisdiction" or "res judicata," the crux of the question is whether there has already been actual consideration of and a decision on the issue presented.

Id.

While Defendant Health Services makes no explicit reference to the Rooker-Feldman doctrine, in seeking dismissal of Plaintiff's complaint on res judicata grounds, Health Services invokes Rule 12(b)(1) as well as Rule 12(b)(6). Def. Mot. Dismiss at 6:26-7:3. Moreover, "[b]ecause the Rooker-Feldman doctrine relates to the court's subject matter jurisdiction, the court may raise the issue sua sponte." Roberts v. Los Angeles City Fire Dept., 86 F.Supp.2d 990, 993 (C.D. Cal. 2000) (citing Worldwide Church of God v. McNair, 805 F.2d 888, 890 (9th Cir. 1986); Young v. Murphy, 90 F.3d 1225, 1230 (7th Cir. 1996)).

The Rooker-Feldman doctrine provides that "inferior courts lack subject matter jurisdiction over cases that effectively seek review of state court judgments and that federal review is possible only through a certiorari petition to the Supreme Court." Craig v. State Bar of California, 141 F.3d 1353, 1354 n.. 1 (9th Cir. 1998) (per curiam). "[A]n inferior federal court established by Congress pursuant to Art. III, § 1, of the Constitution may not act as an appellate tribunal for the purpose of overruling a state court judgment, even though the judgment may rest on an erroneous resolution of constitutional or federal law issues." Texaco, Inc. v. Pennzoil Co., 784 F.2d 1133, 1142 (2d Cir. 1986), rev'd on other grounds sub. nom., Pennzoil v. Texaco, Inc., 481 U.S. 1 (1987). "If the constitutional claims presented to a United States District Court are inextricably intertwined" with the merits of a judgment rendered in a state court proceeding,

"then the District Court is in essence being called upon to review the state court decision. This the District Court may not do." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483 n. 16 (1983).

A claim is "is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." Pennzoil, 481 U.S. at 25 (Marshall, J., concurring). "A federal claim is inextricably intertwined with a state court judgment when 'the relief requested in the federal action would effectively reverse the state court action or void its ruling.'" Canal Capital Corp. v. Valley Pride Pack, Inc., 169 F.3d 508, (8th Cir. 1999) (quoting Bechtold v. City of Rosemount, 104 F.2d 1062, (8th Cir. 1997)).

In the instant case, Tardiff's claims and prayers for relief are inextricably intertwined with the state court's judgment. Tardiff claims that his due process rights were violated because Health Services interpreted Welfare and Institutions Code section 14124.70 et seq. Not to require the Director to give notice of its Medi-Cal lien to Tardiff before he disbursed settlement payments to his clients, after he had failed to give the Director notice, as required by law, of the third-party liability suits he had filed relating to his Medi-Cal covered clients. Tardiff is seeking injunctive relief that would preclude Health Services from applying section 14124.70 et seq. In the manner that the state court in the underlying case has held to be constitutional. Compl. At 3:25-26. Moreover, Tardiff is seeking monetary damages that would reimburse him for the damages for which the state court already deemed him responsible. Compl. At 3:27-28. These requests are in essence an attempt by Tardiff to obtain appellate review in this federal court of the state

court's adjudication of the underlying action and would serve to "effectively reverse the state court action or void its ruling." See Canal Capital Corp., 169 F.3d at 512. Accordingly, the court finds that Tardiff's claims against Defendant Health Services are barred by the Rooker-Feldman doctrine and grants Health Services' motion to dismiss pursuant to Rule 12(b)(1).

C. Eleventh Amendment Immunity

Additionally, Defendant Health Services moves under Rule 12(b)(1) for dismissal of Plaintiff's claims against it because it is cloaked in Eleventh Amendment immunity.

Article III dictates that federal courts are courts of limited jurisdiction. Before a federal court can hear a case, it must determine that there is an actual case or controversy, and that the claim falls within the subject matter of the court. Health Services has asserted Eleventh Amendment immunity pursuant to Federal Rule 12(b)(1), which, if applicable, is jurisdictional. See Mitchell v. Franchise Tax Bd., 209 F.3d 1111, 1117 (9th Cir. 2000).

The Eleventh Amendment bars individuals from bringing civil suits "which seek either damages or injunctive relief against a state, an 'arm of the state,' its instrumentalities, or its agencies." Franceschi v. Schwartz, 57 F.3d 828, 831 (9th Cir. 1995); see also Sheldon H. Namod, 2 Civil Rights and Civil Liberties Litigation: The Law of Section 1983 § 9:48 at 9-119 (2000) ("The Eleventh Amendment bars federal court suits for damages and equitable relief (including § 1983 suits) brought directly against states and their agencies."). "In determining whether an entity is an arm of the state, [a federal court] look[s] to 'the way state law treats the entity.'" Franceschi, 57 F.3d at 831 (quoting Mitchell v. Los Angeles Community College Dist., 861 F.2d 198, 201 (9th Cir. 1988)).

The Ninth Circuit has recognized that the California Department of Health Services enjoys Eleventh Amendment immunity. See Palomar Pomerado Health System v. Belshe, 180 F.3d 1104, 1108 (9th Cir. 1999) (acknowledging Defendant Health Services' Eleventh Amendment immunity). Similarly, numerous federal district courts in California have held that Health Services is a state agency that enjoys Eleventh Amendment immunity. See, e.g., Forces Action Project LLC v.California, No. C 99-0607 MJJ, 2000 WL 20977, at *7 (N.D. Cal. Jan. 5, 2000) ("[T]he states, and the California state agencies (the Department of Justice and of Health Services) would be dismissed under Eleventh Amendment immunity ...")' AIDS Healthcare Found v. Belshe, No. CV97-3235, 1998 WL 1157405, at *10 (C.D. Cal. Dec. 8, 1998) ("An agency, such as a State Department of Health, is considered a part of the state for purposes of the Eleventh Amendment.") (citing Florida Dept. of Health & Rehabilitative Services v. Florida Nursing Home Assn., 450 U.S. 147 (1981)); Charpentier v. Belshe, Civ. No. S-90-758 JG/PAN, 1994 WL 792591, at *4 (E.D. Cal. Dec. 21, 1994) ("First, since Eleventh Amendment immunity precludes the court from affording the plaintiffs any relief against the DHS that defendant is dismissed."); Lynch v. Rank, No. C-83-2340 WHO, 1983 WL 29920, *7 (N.C. Cal. Dec. 15, 1983) (stating that the Eleventh Amendment bars any retroactive relief claims against the California Department of Health Services); California Assn. of Bioanalysts v. Rank, 577 F.Supp. 1342, 1351 (C.D. Cal. 1983) (finding that the Eleventh Amendment bars any retroactive relief claims against the California Department of Health Services). Accordingly, this court need not re-consider that issue here. Plaintiff's claims against Health Services are jurisdictionally barred by the eleventh Amendment.

D. 42 U.S.C. § 1983: "Person"

Finally, Defendant Health Services asserts that Plaintiff's claims against it are jurisdictionally barred

because the California Department of Health Services is not a "person" within the meaning of section 1983. Def. Mot. Dismiss at 8:3-24. "States or governmental entities that are considered 'arms of the State' for Eleventh Amendment purposes" are not "persons" under § 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); see also Gilbreath v. Cutter Biological, Inc., 931 F.2d 1320, 1327 (9th Cir. 1991) (discussing Will). Because the court has already concluded that Health Services is a state agency cloaked in Eleventh Amendment immunity, Health Services is therefore not a "person" under section 1983 and Tardiff's claims against it are jurisdictionally barred.

E. Defendant Belshe

In addition to suing Health Services, Plaintiff Tardiff named as a defendant California Department of Health Services Director Kimberly Belshe, as an individual. Tardiff's complaint was filed on July 7, 2000, yet Defendant Belshe remains unserved. The standard procedures for dismissing a defendant who has gone unserved for more than 120 days are set out by Federal Rule of Civil Procedure 4(m). Rule 5(m) provides that "[I]f service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period." Fed. R. Civ. Proc. 4(m). The Ninth Circuit has recognized, however, that in certain "limited" instances, a court may, sua sponte, resolve slaims against a non-appearing party "on the merits." Columbia Steel Fabricatores, Inc. v. Ahlstrom recovery, 44 F.3d 800, 803 (9th Cir. 1995) (affirming district court's sua sponte grant of summary judgment for non-appearing party on, inter alia,

res judicata grounds). The present case presents one such instance.

In addition to never having served Defendant Belshe, Plaintiff Tardiff's complaint makes no specific claim against her. Even assuming Plaintiff could "show [] good cause" for not having served defendant Belshe within Rule 4(m)'s 120-day limit, Fed. R. Civ. Proc. 4(m), his complaint would still fail to state a claim against her. Moreover, any amendment would be futile; for the reasons set forth above, any claim predicated on Belshe's enforcement of Medi-Cal liens against Plaintiff Tardiff would be res judicata. Accordingly, the court dismisses Plaintiff Tardiff's claims against Defendant Belshe with prejudice.

III. CONCLUSION

For the foregoing reasons, Plaintiff's claims against the Defendant California Department of Health Services and Defendant Belshe are dismissed with prejudice.

DATED: February 6, 2001

/s/ Nora M. Manella
Nora M. Manella
United States District Court

APPENDIX F

Filed February 22, 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID C. TARDIFF,

Plaintiff,

vs.

STATE OF CALIFORNIA, DEPARTMENT OF HEALTH SERVICES, KIMBERLY BELSHE, as an individual,

Defendants

CASE NO.: 00-7374-NM (Ex)

NOTICE OF APPEAL

NOTICE IS HEREB GIVEN that David C. Tardiff, Plaintiff in the above-entitled case, hereby appeals to the United States Courts of Appeal for the Ninth Circuit from an order granting Defendants motion to Dismiss with Prejudice entered in this action on the 7th day of February 2001.

DATED: February 20, 2001

By: /s/ David C. Tardiff

DAVID C. TARDIFF, SBN 33671
Attorney for Plaintiff
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APPENDIX G

Filed January 9, 2002

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 01-55469
CT/AG#: CV-00-07374-NM (Ex)

DAVID C. TARDIFF

Plaintiff-Appellant

v.

STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES; KIMBERLY BELSHE, as an individual

Defendants-Appellees

APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.
Costs taxed.

Filed and entered 10/24/01

Filed January 9, 2002

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID C. TARDIFF,	No. 01-55469
Plaintiff-Appellant	D.C. No. CV-00-07374-NM (Ex)
v.	
STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES; et al.,	MEMORANDUM*
Defendants-Appellees	

Appeal from the United States District Court
for the Central District of California
Nora M. Manella, District Judge, Presiding

Submitted October 15, 2001**

Before: REINHARDT, GRABER, and BERZON, Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

David C. Tardiff appeals pro se the judgment dismissing his 42 U.S.C. § 1983 action, which alleged that a state court judgment enforcing third-party Medi-Cal liens against him violated due process. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a dismissal based on lack of subject matter jurisdiction, *see Garvey v. Roberts*, 203 F.3d 580, 587 (9th Cir. 2000), and we affirm.

Tardiff's section 1983 motion effectively seeks review of a state court judgment. The district court properly dismissed Tardiff's action because a district court may not exercise appellate jurisdiction over a state court decision. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) (district courts may not exercise appellate jurisdiction over state courts).

AFFIRMED.

APPENDIX H

Filed December 26, 2001

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID C. TARDIFF,	No. 02-55469
Plaintiff-Appellant,	D.C. # cv-00-07374-NM Central California
v.	
STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES; et al.,	ORDER
Defendants-Appellees.	

Before: REINHARDT, GRABER, and BERZON, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

No further filings will be accepted in this closed appeal.